



Virginia  
Regulatory  
Town Hall

## Emergency Regulation Agency Background Document

<b>Agency Name:</b>	Dept. of Medical Assistance Services; 12 VAC 30
<b>VAC Chapter Number:</b>	12 VAC 30, Chapters 50, 80
<b>Regulation Title:</b>	Amount, Duration and Scope of Services: School Health Services; Methods and Standards For Establishing Payment Rates; Other Types of Care -- Fee-for-service providers: School Divisions
<b>Action Title:</b>	School Health Services and Modified fee-for-service Reimbursement for School Division Providers
<b>Date:</b>	GOV ACTION NEEDED BY 06/27/03

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

### Emergency Preamble

*Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).*

*Please include a brief summary of the emergency action. There is no need to state each provision or amendment.*

This regulatory action qualifies as an emergency, pursuant to the authority of the Code of Virginia, 1950 as amended, § 2.2-4011, because it is responding to a change in the Virginia Appropriations Act that must be effective within 280 days from the date of enactment of the Appropriations Act (the 2003 Appropriations Act, Items 325 XX, EEE, HHH) and this

regulatory action is not otherwise exempt under the provisions of the Code § 2.2-4006. Since DMAS intends to continue regulating the issue contained in this emergency regulation past the effective period permitted by this emergency action, it is also requesting approval of its Notice of Intended Regulatory Action in conformance to § 2.2-4007.

This mandate is part of the revenue maximization initiative. Items 325 XX and EEE require DMAS to promulgate emergency regulations to expand school health services. Item HHH of the 2003 Appropriations Act authorizes DMAS to establish separate payment rates for state and local government providers of special education and screening services. This regulation proposes to expand school health services and modify the fee-for-service payments to school divisions by incorporating school division costs into the fee-for-services amounts paid to them.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.*

*Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.*

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The Code of Virginia (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, § 32.1-324, authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the Board's requirements.

The Medicaid authority as established by § 1902 (a) of the Social Security Act [42 U.S.C. 1396a] provides governing authority for payments for services

## Substance

*Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

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The sections of the State Plan for Medical Assistance that are affected by this action are: School Health Services [Supplement 1 to Attachment 3.1-A&B (12 VAC 30-50-229.1)] and Methods and Standards for Establishing Payment Rate – Other Types of Care, Fee-For-Service Providers

[Attachment 4.19-B, § 6 (12VAC 30-80-75)]. In addition to amending 50–229.1 by setting out special education and screening services more fully, this emergency regulation also creates a new section in Chapter 80 -- Fee-For-Service Providers: School Divisions, 12 VAC 30-80-75.

### School Health Services

The federal *Individuals with Disabilities Education Act* (IDEA) requires school divisions to provide all special education and related services to children with one or more of thirteen specified disabilities. Federal funds are authorized under IDEA for the services but the majority of the funds have historically been from state and local revenues. Code of Virginia § 32.1-326.3 requires that DMAS maximize access to health care for poor special education students. The expanded services set forth in the emergency regulation meet the requirements of both IDEA and § 32.1-326.3. In addition, DMAS is given specific authority for emergency regulations to cover the additional medical and transportation needs for special education students in the 2003 Appropriations Act, Items 325 XX and 325 EEE.

The services set forth in the emergency regulation are currently provided by Virginia school divisions to children in special education and represent an expansion of DMAS school-based services coverage. Consistent with other DMAS covered school-based services for children in special education, the DMAS reimbursement will be the federal share of the payment only with the school division documenting the non-federal matching share. The emergency regulation also reduces constraints cited by the school divisions in billing DMAS for services. In particular, service limits and prior authorization for services are removed and school health professionals other than physicians may authorize services.

### Fee-For-Service Providers: School Divisions (12 VAC 30-80-75)

The emergency regulation adds a new subsection to Chapter 80 on fee-for-service providers as part of the chapter on the Standards and Methodology for Establishing Payment Rates: Other Types of Care. This subsection would apply only to school division providers. Fee-for-service rates would be based on costs incurred.

School division providers certify the state share for special education services that they bill to Medicaid. As a result, DMAS reimburses schools only for the federal share (FFP) of the amounts billed and approved for payment by Medicaid. No state funds are expended. In addition, the General Assembly has directed that, in the future, school divisions shall receive only half of the FFP and DMAS will retain the other half above previously billed amounts. It is therefore in the interest of the school divisions and the Commonwealth to pay the maximum permitted by federal law and regulation.

This emergency regulation allows DMAS to set separate rates for school division providers. DMAS already does this where there are no other providers billing for similar services. But there are some services where other providers bill for the same service.

The emergency regulation also establishes a methodology for setting fees based on direct, indirect and capital costs associated with providing the service. Basing fees on costs is a generally accepted methodology for reimbursing providers. Cost information for school

providers will be developed from financial and time study information gathered as part of the process of preparing administrative claims for periods after January 1, 2003. DMAS will supplement this information with data from the Department of Education, interviews with providers and surveys as necessary. Information from providers participating in administrative claiming will be weighted so that it is representative of all school providers in the state.

### Alternatives

*Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.*

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Other alternatives considered would have meant less federal funds drawn down for the school services and thus not meeting the intent of the legislative directive. Regarding reimbursement, the agency considered paying schools rates similar to those paid other providers but either felt that CMS might not accept these rates or that they would not be the maximum that could be paid.

### Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

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This regulation has no impact on recipients or their families. These changes do not strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; strengthen or erode the marital commitment; or increase or decrease disposable family income.